

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/25/2022

-----X
:
ANGEL DIAZ, MIGUEL GARCIA VILLEGAS, and :
SERVANDO GARCIA VILLEGAS, *individually and on* :
behalf of others similarly situated, :

Plaintiffs,

-v-

EXQUISITO RESTAURANT INC. (D/B/A EXQUISITO :
RESTAURANT) and ARGENEDIS NUNEZ, :

Defendants.

22-cv-3859 (LJL)

ORDER

-----X
LEWIS J. LIMAN, United States District Judge:

Plaintiffs request that the Court dismiss without prejudice this case alleging claims under the Fair Labor Standards Act of 1947, 29 U.S.C. § 201 *et seq.* Dkt. No. 18.

In *Samake v. Thunder Lube, Inc.*, 24 F.4th 804 (2d Cir. 2022), the Second Circuit held that a district court confronted with a notice of dismissal without prejudice has the authority and jurisdiction to determine whether the parties have reached a settlement and, if so, must engage in a *Cheeks* fairness review. *Id.* at 811 (citing *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015)).

Plaintiffs request dismissal on the basis that the action was “inadvertently filed . . . in the Southern District of New York instead of the Eastern District of New York” and so that Plaintiffs “may file this case in the applicable jurisdiction.” Dkt. No. 18. It is apparent that the parties have not “reached a settlement necessitating *Cheeks* review.” *Samake*, 24 F.4th at 807. Accordingly, the Court will sign the notice of dismissal so that this case can be refiled in the United States District Court for the Eastern District of New York.

SO ORDERED.

Dated: October 25, 2022
New York, New York



LEWIS J. LIMAN
United States District Judge